Document 84 Attachment A

Just because you read it on the internet doesn't make it true.

Actual American Farm Bureau Federation website

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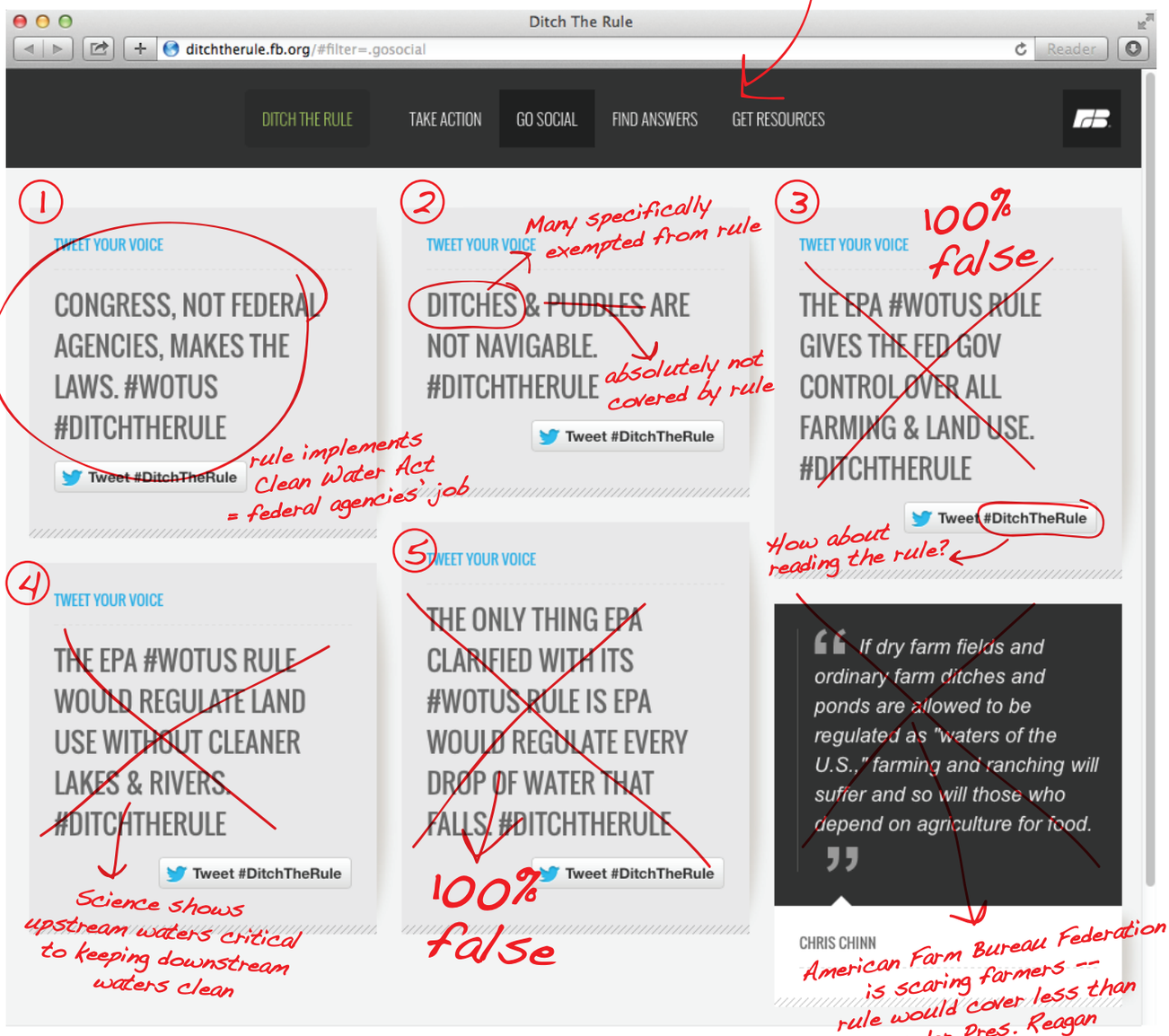
The American Farm Bureau Federation has a lot to say about the Obama administration's proposed Clean Water Protection Rule. The problem is, all of these claims are misleading or entirely false.



Natural Resources Defense Council analysis

1 There's nothing new about the Environmental Protection Agency (EPA) enforcing the Clean Water Act and other environmental laws; that's what it's been doing under Republicans and Democrats since it was created by President Nixon. This claim is simply a distraction. No one actually questions whether EPA has the authority to implement the Clean Water Act; opponents of clean water protections just don't like the way Congress enacted it to work. It's important to note that Congress intended that the law be given "the broadest possible constitutional interpretation" [H.R. Rep. No. 92-911 at 131 (1972), 1972 Legislative History at 818.] and the Supreme Court's decisions authorize the protection of at least those water bodies that the science shows to collectively have a significant impact on downstream waters' chemical, biological, or physical condition.

2 The Clean Water Protection Rule simply does not apply to puddles. The proposal is explicit about this, saying that "a relatively small, temporary pool of water that forms on pavement or uplands immediately after a rainstorm, snow melt, or similar event ... cannot reasonably be considered a water body or aquatic feature at all." [79 Fed. Reg. at 22,218] As for "ditches," some would be covered – as they have been traditionally -- because they function as tributaries. In fact, many "ditches" have replaced natural streams over time. And some absolutely are navigable; as the Bush Administration's Supreme Court lawyer told the Court, "the Erie Canal is a ditch." But that issue is irrelevant, because no Supreme Court justice – not one, ever – has ruled that the Clean Water Act can only protect physically navigable waters, because the Act defines "navigable waters" broadly to include "the waters of the United States."

3 This is false. On agricultural lands, "prior converted cropland" is specifically exempt from being covered, even when it would otherwise qualify as a protected wetland. [Proposed 40 CFR 230.3(t)(2)] Other waters that would be exempt include "[a]rtificially irrigated areas that would revert to upland" after irrigation stops, and "[a]rtificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing" – and that's not even the full extent of the exemptions. [Proposed 40 CFR 230.3(t)(5)(i) & (ii)]

4 This is contradicted by copious scientific analysis. The Clean Water Protection Rule would restore traditional protections for tributary streams and nearby waters. The proposal is based on a peer-reviewed compilation of over 1,000 pieces of scientific literature, also peer-reviewed, which concluded that "streams, individually or cumulatively, exert a strong influence on the character and functioning of downstream waters," and also that nearby waters "serve an important role in the integrity of downstream waters because they ... act as sinks by retaining floodwaters, sediment, nutrients, and contaminants that could otherwise negatively impact the condition or function of downstream waters." [Connectivity Study, p. 1-3, http://1.usa.gov/1qQAhZY]

5 This is false. Rainfall and irrigation flow-back running off farm fields are not regulated, because both "agricultural stormwater discharges and return flows from irrigated agriculture" are exempted from discharge permitting, and because neither of those flows are defined "waters." [Clean Water Act § 502(14)] Groundwater also is expressly exempted from being protected as a "water of the U.S." [Proposed 40 CFR 230.3(t)(5)(vi)] Moreover, the rule would not cover the vast majority of waters that are not adjacent to other protected waters; EPA and the Corps estimate that the rule would only cover somewhere between 17-26% of these "other waters." [Economic Analysis, p. 44, Exhibit 28, http://1.usa.gov/1sKTG09]

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